

Internal Revenue Service

Number: **201049014**

Release Date: 12/10/2010

Index Numbers: 1502.75-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B02

PLR-113321-10

Date:

September 01, 2010

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

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Sub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Sub 11 =

Sub 12 =

Sub 13 =

Sub 14 =

Sub 15 =

Sub 16 =

Sub 17 =

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Sub 18 =

Sub 19 =

Sub 20 =

Sub 21 =

Sub 22 =

Sub 23 =

Sub 24 =

Sub 25 =

Sub 26 =

Sub 27 =

Sub 28 =

PLR-113321-10

Sub 29 =

Sub 30 =

Sub 31 =

Sub 32 =

Sub 33 =

Sub 34 =

Sub 35 =

Sub 36 =

Date 1 =

Date 2 =

State X =

Accounting Firm =

Dear _____ :

This letter responds to your March 24, 2010, letter requesting that the Commissioner make a determination under Treas. Reg. § 1.1502-75(b)(3) of the Income Tax Regulations (the "Regulations"), that Sub 1 through Sub 36 as described in the Legend above (collectively the "Omitted Subsidiaries") have joined in the filing of a consolidated Federal income tax return filed by Parent for the taxable year ended on Date 2. The information submitted in that request and in later correspondence is summarized below.

FACTS

Parent is a corporation incorporated on Date 1 under the laws of State X. During the taxable year ended Date 2, Parent acquired thirty-three of the Omitted Subsidiaries and, in conjunction with the acquisition transactions, Parent formed three of the Omitted Subsidiaries. Parent's in-house tax department was responsible for the provision of tax advice and preparation of tax returns for Parent and the Omitted Subsidiaries, including the provision of advice and compliance services regarding the election to file a consolidated return pursuant to Treas. Reg. § 1.1502-75.

Parent later engaged Accounting Firm to provide consultation regarding specific issues in connection with the preparation of Parent's initial federal consolidated income tax return for the taxable year ended Date 2. One of Accounting Firm's partners has submitted a signed affidavit stating the following: that Accounting Firm provided Parent with only limited services; that Accounting Firm did not advise Parent with respect to the requirements for filing an initial consolidated return or sign as the preparer of Parent's tax return for the taxable year ended Date 2; and that Accounting Firm did not inform Parent that a Form 1122 must be filed pursuant to Treas. Reg. § 1.1502-75 to effectuate an election to file a consolidated return.

For the taxable year ended on Date 2, Parent filed Form 1120, including a Form 851 (Affiliations Schedule) identifying and including the Omitted Subsidiaries, but inadvertently failed to file Forms 1122 (Authorization and Consent of Subsidiary Corporation To Be Included in a Consolidated Return) for any of the Omitted Subsidiaries.

REPRESENTATIONS

Parent has made the following representations:

- (a) All of the income and deductions for each member of the Parent group (Parent and all of the Omitted Subsidiaries) was included in the consolidated Federal income tax return for the taxable year ended Date 2.

- (b) A separate federal income tax return was not filed by any of the members of the Parent group for the taxable year ended Date 2.
- (c) Except for the failure to timely file Forms 1122, Parent and the Omitted Subsidiaries were eligible to file a consolidated Federal income tax return, with Parent as the common parent, for the taxable year ended Date 2.
- (d) As of the date of this request, the Internal Revenue Service has not notified Parent or any of the Omitted Subsidiaries of the failures to file Forms 1122 with the consolidated Federal income tax return for the taxable year ended Date 2.
- (e) For the taxable year ended Date 2, all of the members of the Parent group were included (and for future filings will be included) on the Affiliations Schedule, Form 851, attached to the consolidated Federal income tax returns filed by the Parent group.

LAW

Section 1.1502-75(a)(1) provides that an affiliated group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents, pursuant to § 1.1502-75(b), to the regulations under § 1502 of the Internal Revenue Code.

With regard to the consent of a corporation for a group's first consolidated year, § 1.1502-75(b)(1) provides that consent of a corporation shall be made by such corporation joining in the making of a consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. Section 1.1502-75(h)(2) also provides rules for properly executing Forms 1122 and attaching them to a consolidated return, and provides that a Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Section 1.1502-75(b)(2) provides that, if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member nevertheless has joined in the making of a consolidated return by such group. Factors that the Commissioner will take into account in making this determination include the following: (i) whether or not the income and deductions of the member for such taxable year were included in the consolidated return; (ii) whether or not a

separate return was filed by the member for that taxable year; and (iii) whether or not the member was included in the affiliations schedule, Form 851, for such taxable year.

Section 1.1502-75(b)(3) provides that if any member has failed to join in the making of a consolidated return under either §§ 1.1502-75(b)(1) or (b)(2), then the tax liability of each member of the group shall be determined on the basis of separate returns unless the common parent corporation establishes to the Commissioner's satisfaction that the failure of such member to join in the making of the consolidated return was due to a mistake of law or fact, or due to inadvertence. In such case, such member shall be treated as if it had filed a Form 1122 for such year for purposes of § 1.1502-75(h)(2), and thus joined in the making of the consolidated return for such year. Section 1.1502-75(b)(3).

RULING

Based solely on the information submitted and the representations made, we rule that, for purposes of § 1.1502-75(h)(2), each of the Omitted Subsidiaries each shall be treated as if it had filed a Form 1122 with Parent's consolidated Federal income tax return for the taxable year ended on Date 2, and thus joined in the making of the consolidated return for such year (§ 1.1502-75(b)(3)).

CAVEATS

No opinion is expressed or implied about the tax treatment of any other aspect of any transaction or item discussed or referenced in this letter, or about the tax treatment of any conditions existing at the time of, or effects resulting from, any transaction or item that is not specifically covered by the above ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel (Corporate)